

**IN THE MISSOURI SUPREME COURT**

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<b>CITY OF ST. PETERS,</b>	)	
	)	<b>Supreme Court No.: SC94379</b>
<b>Appellant,</b>	)	
	)	<b>Court of Appeals No.: ED100701</b>
<b>v.</b>	)	
	)	<b>Circuit Court No.: 1311-MU00010</b>
<b>BONNIE A. ROEDER,</b>	)	
	)	
<b>Respondent.</b>	)	

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**Appeal from the Eleventh Judicial Circuit Court  
County of St. Charles, State of Missouri  
Honorable Ted House  
Division 1**

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**SUBSTITUTE REPLY BRIEF OF APPELLANT**  
**CITY OF ST. PETERS**

HAZELWOOD & WEBER LLC  
V. Scott Williams, #36177  
John H. Kilper, #60997  
200 North Third Street  
St. Charles, Missouri 63301  
Office: 636-947-4700  
Facsimile: 636-947-1743  
swilliams@hazelwoodweber.com  
jkilper@hazelwoodweber.com

*Attorneys for Appellant,  
City of St. Peters*

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## ARGUMENT

### **I. The City’s Camera Ordinance does not conflict with State law [Reply in Support of Points I and II].**

For the reasons discussed in more depth in the City’s opening Brief, §§ 43.505 and 43.512 RSMo. are more specific than § 302.302 RSMo. with respect to whether points should be assessed for red-light camera violations in that the Manual<sup>1</sup> promulgated by the Department of Public Safety pursuant to § 43.512, and with the approval of this Court, expressly provides that no points are to be assessed for red-light camera violations. L.F. 266. Therefore, the City’s Camera Ordinance does not conflict with state law.

Indeed, Respondent does not dispute that the Department of Public Safety is required by § 43.512 RSMo to create, with the approval of this Court, the Manual, which must be used by criminal justice agencies, including the City. Further, Respondent concedes the Director of Revenue (“DOR”) is empowered by § 302.302.1 RSMo to implement a points system, but argues that the DOR does not have discretion to “create charge codes which explicitly conflict with Missouri statutes.” Respondent’s Brief, p. 10.

Respondent also argues that because the Department of Public Safety and Department of Revenue are part of the Executive Branch of government, they have “no power at all to make laws or define crimes, because to do so would invade the magistracy of the Legislative Branch.” Respondent’s Brief, p.8.

Respondent’s argument is nonsensical—neither the Department of Public Safety nor the Department of Revenue has made any new law or defined a new crime. Rather,

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<sup>1</sup> Capitalized terms carry the same meaning as they did in the City’s opening Brief.

determining whether a red-light camera violation should be listed as a “points” violation in the Manual is wholly within the Department of Public Safety’s authority to act as “the central repository for the collection, maintenance, analysis and reporting of crime incident activity”—authority given to the Department by the General Assembly. *See* § 650.005 RSMo. (creating the Department of Public Safety).

Further, § 302.302 RSMo. does not specifically state whether points should be assessed against individuals who commit traffic violations detected by an automatic camera enforcement system. The DOR, however, has discretion to interpret Chapter 302 and determine whether violations prosecuted under an automated camera enforcement system qualify as “moving violations.” The DOR has done so and the Courts should defer to his interpretation. *See Plumb v. Missouri Dept. of Social Services*, 246 S.W.3d 475, 479 (Mo. App. E.D. 2007).

Moreover, as discussed above, the City is required by § 43.512 RSMo. to abide by the Manual, which provides that no points should be assessed for violation of a red traffic signal that is detected by an automatic camera enforcement system.

In addition, Respondent’s heavy reliance on *Brunner v. City of Arnold*, 427 S.W.3d 201 (Mo. App. E.D. 2014) is misplaced. In *Brunner*, plaintiffs challenged the City of Arnold’s ordinance that provided for an automated red light traffic enforcement system. *Id.* at 209. The City of Arnold’s ordinance authorized cameras to take photographs of an intersection’s steady red light and the license plate of the vehicle that entered into the intersection; the ordinance expressly ***prohibited*** photographing the vehicle’s driver. *Id.* at 206-07. The ordinance also purported to create a rebuttable

presumption that the owner of the vehicle was the driver of the vehicle. *Id.* at 207. The ordinance also provided that no points would be assessed against the driver's record of any person that violated the ordinance. *Id.*

Among its holdings, the Court of Appeals held that the ordinance's failure to assess points against the driver's record conflicted with state law and was therefore void and unenforceable. *Id.* at \*229. However, *Brunner* does not in any way address the relationship between §§ 43.505, 43.512, and 302.302 RSMo., and the fact that the Manual required the City to not assess points for violation of its Camera Ordinance. Further, the ordinance at issue in *Brunner* did not appear to have a severability clause or, if it did, that issue was not raised by the parties or addressed by the Court of Appeals.<sup>2</sup>

Accordingly, this Court should reverse the Judgment and reinstate the Jury's verdict.

**II. Alternatively, even if the Camera Ordinance's no-point clause does conflict with State law, such conflict does not provide Respondent with a defense to the citation [Reply in Support of Point III].**

Respondent contends that the holding of *State v. Conz* is merely *dicta*. Respondent's Brief, p. 17. In *Conz*, the Court of Appeals noted that the prosecution failed

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<sup>2</sup> As discussed in detail in Point IV of the City's opening Brief and below, the Camera Ordinance contains an express and valid severability clause the effect of which is to preclude the Camera Ordinance from being rendered void due to alleged unenforceability of a severable section of the ordinance.

to submit certain evidence required by Missouri law to prove a defendant's status as a "persistent offender," but held that such failure was not fatal to the prosecution because the State presented other evidence to prove the defendant's status as a "persistent offender." 756 S.W.2d 543, 546 (Mo. App. W.D. 1988). The Court held that the statutory requirement to submit certain evidence was not mandatory but merely directory. *Id.* at 547-48. The Court concluded that the defendant's conviction should be affirmed because defendant did not suffer any prejudice from the State's failure to introduce such evidence. *Id.* at 547-48. This holding was not *dicta*, but was *essential* to the Court affirming the conviction. Indeed, even if the Court in *Conz* provided two alternative grounds to affirm the judgment, that does not render the alternatives *dicta*. Instead, "when a court bases its decision on two distinct grounds, each is as authoritative as the other and neither is obiter dictum." *Jones v. Ladriere*, 108 S.W.3d 736, 806 n.2 (Mo. App. E.D. 2003).

Respondent's reading of *Kersting v. Dept. of Revenue*, 792 S.W.2d 651, 652 (Mo. App. E.D. 1990) is also misplaced. In *Kersting* the plaintiff was convicted of vehicular manslaughter. *Id.* at 652. Pursuant to § 302.225.2 RSMo, the trial court was required to forward to the DOR a record of the conviction within ten days of the conviction. *Id.* Although the court failed to timely forward the record of conviction to the DOR, the DOR moved to assess points against plaintiff's driving record and revoke his driving privileges. *Id.* Plaintiff filed a petition for review, which the trial court granted due to the previous court's failure to comply with the ten-day deadline. *Id.*

On appeal, this Court held that although § 302.225.2 RSMo, directs that the court "shall" forward a record of conviction to the DOR within ten days, that requirement was

not mandatory because the statute did not set out any consequences should the court fail to comply with the deadline. *Id.* at 652-53. Rather, this Court explained that the “legislative intent” of § 302.302 RSMo, which calls for the assessment of points, “is to speed revocation of driving privileges, [and] *not to provide procedural protection for the driver.*” *Id.* at 653 (emphasis added).

Thus, in *Kersting* this Court held that the State’s failure to strictly comply with a statutory requirement of § 302.302 RSMo. *did not* provide the defendant with a defense to the charged offense. Accordingly, because the direction under § 302.302.1(1) RSMo to assess points for moving violations is merely directory and not mandatory, the Trial Court erred in finding that the no-points provision was in irreconcilable conflict with State law, and in dismissing the charge against Respondent based on § 302.302.1 RSMo, as applied in this case.

**III. Alternatively, even if the Camera Ordinance’s no-point provision does conflict with State law, the Trial Court erred in dismissing the citation because the Camera Ordinance contains an unambiguous severability clause that should be enforced [Reply in Support of Point IV].**

Respondent’s primary defense to the citation has been that the Camera Ordinance’s no-points provision conflicts with State law. However, the Camera Ordinance contains a clear severability clause, the effect of which would be to strike the allegedly improper no-points provision from the Camera Ordinance.

Respondent claims that the severability clause should be disregarded because to enforce the severability clause would cause the Camera Ordinance to be “more severe to

her than it was originally.” Respondent’s Brief, p. 19. Respondent wants to “have her cake and eat it too.” She attacks the no-points clause of the Camera Ordinance claiming it conflicts with State law, but then loudly protests the City’s accommodation of her concern by seeking to enforce the severability clause contained within the Ordinance that would eliminate the alleged conflict. Respondent cannot complain about severance of the no-points provision since that is the very provision she challenges and the only provision upon which the Trial Court based its ruling.

Respondent also claims that applying the severability clause would violate her due process rights and the rule of lenity. Respondent’s Brief, pp. 19-20. Respondent, however, cites no relevant authority to support these arguments, and has not explained her failure to do so. Indeed, Respondent has not cited any decision in which a court found that a severability clause was ineffective because severance of a provision within the ordinance caused a “more severe” outcome for the individual that violated the ordinance.

Further, Respondent has not explained how application of the severability clause would constitute a violation of Respondent’s due process rights. On the contrary, it is undisputed that Respondent was afforded her due process rights in that she received a fair trial by a jury during which the City was required to meet its burden of proving Respondent committed the offense beyond a reasonable doubt.

Moreover, the rule of lenity has no application in this case. “The rule of lenity gives a criminal defendant the benefit of a lesser penalty where there is an ambiguity in the statute allowing for more than one interpretation,” but is only applicable if there is some ambiguity in the words of the statute. *State v. Rowe*, 63 S.W.3d 647, 650 (Mo.

banc 2002). Respondent does not assert the Camera Ordinance is ambiguous or allows for more than one interpretation in this case.

Respondent's arguments that enforcing the severability clause would "be asking the judicial branch to unlawfully tread on the power of the legislative branch and so violate [Respondent's] right to due process," and that a severability clause can only be applied to provisions of a statute deemed unconstitutional are also unavailing. Respondent's Brief, p.20-21.

The Camera Ordinance contains an unambiguous severability clause that clearly expresses the Board of Aldermen's intent that any "invalid or unenforceable" provision of the Ordinance be severed, "it being the intent of the Board of Aldermen that it would have enacted this Ordinance without the invalid or unenforceable provision . . . ." Camera Ordinance; L.F. 42. And, the law is clear that "where a provision of a statute or ordinance [is] severable and [is] not interdependent one upon the other, the whole will *not* be declared void because a part is invalid, but the void parts or portions will be eliminated and the valid parts upheld and enforced, provided this will not defeat the substantial object of the enactment." *City of St. Louis v. Grafeman Dairy Co.*, 89 S.W. 617, 619 (Mo. 1905). Moreover, Missouri law does not limit the effectiveness of severability clauses to only provisions that are deemed constitutional. *See National Advertising Co. v. Mo. State Highway and Transp. Comm'n*, 862 S.W.2d 953, 955-57 (Mo. App. E.D. 1993) (severing provisions of City of St. Louis ordinances because they conflicted with *state law*).

Thus, contrary to Respondent's assertion, severability is not limited to only provisions of an ordinance that are unconstitutional. Further, enforcing the severability

clause in this case would in no way be “tread[ing] on the power of the legislative branch,” but rather, would be consistent with well-established law in Missouri.

The Camera Ordinance contains a valid severability clause. As such, the no-points clause, if it is indeed invalid, should have been stricken from the Camera Ordinance and the balance should have been enforced against Respondent.

#### **IV. Response to Respondent’s Additional Arguments**

Respondent raises five additional arguments beginning on page 24 of Respondent’s Brief that are not directly in response to the City’s Points Relied On.<sup>3</sup>

First, Respondent argues that the City’s Notice of Violation sent to Respondent failed to require that the officer issuing the citation have probable cause to believe Respondent committed the crime. Respondent’s Brief, p. 29. Second, Respondent asserts the Notice of Violation does not comply with Rule 37.33. *Id.* at p. 30. Third, Respondent argues that the Notice of Violation creates an implied rebuttable presumption. *Id.* at pp. 33-37. Fourth, Respondent asserts an as-applied Equal Protection Clause challenge to the Camera Ordinance. *Id.* at 37. Finally, Respondent argues that the process of comparing the red light camera image of the driver of a vehicle to the

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<sup>3</sup> Respondent does not include any argument in the section of her Brief entitled “Identity of the Driver.” Rather, Respondent merely examines the text of the Camera Ordinance and offers her opinions as to the meaning of its terms, but ultimately concludes that only the actual driver of a vehicle can be found guilty under the Camera Ordinance. *See* Respondent’s Brief, pp. 24-27.

driver license photo of that person “fails due process” because it is “an impermissibly suggestive out-of-court identification that creates a very substantial likelihood of irreparable misidentification.” Respondent’s Brief, p. 38.

The City will address these arguments in turn. None of Respondent’s arguments have any merit.

**A. The City’s issuance of the Notice of Violation was supported by probable cause.**

“Probable cause” exists when “the facts and circumstances within the arresting officer’s knowledge and of which he has reasonably trustworthy information are sufficient to warrant a belief by a man of reasonable caution that the person to be arrested has committed a crime.” *State v. Abbott*, 571 S.W.2d 809, 813 (Mo. App. Spr. 1978). “While the quantum of information necessary to fashion probable cause means more than mere suspicion,” the existence of probable cause “must be determined by practical considerations of everyday life on which reasonable persons act and not the hindsight of legal technicians.” *State v. Heitman*, 589 S.W.2d 249, 253 (Mo. banc 1979).

For example, in *State v. Abbott*, police officers responded to an apparent robbery and murder at a liquor store. 571 S.W.2d at 811. There they discovered a deceased victim laying near the front door of the store. *Id.* Near the store, the officers found two sets of footprints that appeared to be made by boots. *Id.* After further investigation, the officers visited defendant’s home. *Id.* The defendant was not present, but the defendant’s roommate provided the officers with consent to search the home. *Id.* at 812. During their search, the officers found boots, which matched the prints found at the scene of the crime.

*Id.* The officers also located the defendant in the bathroom of the residence and arrested him. *Id.* After conviction, the defendant appealed and argued that the officers lacked probable cause to arrest him. *Id.* at 810-13. The Court of Appeals disagreed and held that “as soon as [the officers] saw and examined the defendant’s cowboy boots and realized that the boots had the characteristics of the boots which left the impressions in the earth they had seen earlier the same day at the [] liquor store, they had probable cause to arrest the defendant.” *Id.* at 813.

The City Police Officer had even more evidence to support a finding of probable cause than the officers in *Abbott*. In *Abbott*, the officers supported their finding of probable cause on the fact that boot prints at the scene of the crime matched the boots owned by the defendant. In this case, a City Police Officer confirmed that a vehicle owned by Respondent, a female, was driven by a female in violation of the City Traffic Code by running a red light.

Indeed, pursuant to the Camera Ordinance, after a red light violation is detected on the automated red light traffic enforcement system, the Ordinance requires that:

An officer employed by the St. Peters Police Department shall examine the recorded image to determine if a violation of the City Traffic Code has occurred. If the recorded image shows a violation, contains the date and time of the alleged violation, shows the letter and numbers on the vehicle’s license plate, as well as the State in which the license was issued, and the traffic control signal while it is emitting a steady red signal, the officer may use any lawful means to identify the vehicle’s owner.

City Code, § 335.095.D, L.F. 192.

In this case, a City Police Officer reviewed a video and photographs generated by the automated system. *See* Excerpts of deposition transcript of B. Peters, page 6, line 7, through page 9, line 7 (“Peters Depo. \_\_: \_\_”)<sup>4</sup>, L.F. 90. The video showed a violation of the City’s Code, in that the video showed a vehicle traveling into an intersection after the light had turned red. *See* Notice of Violation, L.F. 97. A City Police Officer then investigated and determined that Respondent was the registered owner of the vehicle that ran the red light. Peters Depo. 6:7-18, 7:13-9:7, L.F. 90. Based on the name of the registered owner, the City Police Officer concluded that the registered owner of the vehicle was a female. *Id.* In viewing the photographs of the violation, the Officer further determined that the driver of the vehicle at the time of the violation was also a female. *Id.* Officer Peters then issued the Notice of Violation.

Moreover, the Notice of Violation contained photographs of Respondent traveling into and through an intersection after the light had turned red and also set out the time and date of the violation. L.F. 52. This evidence is more than “sufficient to warrant a belief by a man of reasonable caution” that Respondent had run the red light in her registered vehicle. *Abbott*, 571 S.W.2d at 813. Further, upon presentation of this same

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<sup>4</sup> Respondent cited portions of the transcript from Officer Brian Peters’ deposition, which were attached as an exhibit to her Motion to Dismiss at L.F. 89-96 in her Respondent’s Brief. Excerpts of Officer Peters’ deposition were also attached as an exhibit to the City’s Memorandum in Opposition to Defendant’s Motion to Dismiss at L.F. 148-154.

evidence during trial, the Jury unanimously concluded that Respondent was in fact the person shown in the photographs and video.

Thus, both in form and as applied to Respondent, the Camera Ordinance and the Notice of Violation comply with Missouri law's requirement that probable cause support issuance of a notice of violation.

In form, the Camera Ordinance directs the officer to review the video and photographs, and determine if a violation of the Traffic Code has occurred and, if so, to confirm the date and time of the violation and the subject vehicle's license plate numbers; if all of this is shown, the officer is instructed to "use any lawful means to identify the vehicle's owner." L.F. 193. Accordingly, the Camera Ordinance does not limit an officer's ability to investigate a violation or restrict an officer's ability to develop probable cause. In practice, as relevant to this case, probable cause supported the City's issuance of a Notice of Violation to Respondent.

Therefore, contrary to Respondent's argument, the City's issuance of the Notice of Violation was supported by probable cause.

**B. The City's Notice of Violation complies with Rule 37.33**

Respondent argues that the Notice of Violation violates Rule 37.33(b)(2)(B) by not formally stating that Respondent had the option of "pleading not guilty and appearing at trial." Respondent's Brief, p. 31-32.

Rule 37.33(a) sets out various items that must be included in a Notice of Violation. Rule 37.33(b) states that if "a violation has been designated by the court to be within the

authority of the violation bureau pursuant to Rule 37.49, the accused shall also be provided the following information:

- (1) The specified fine and costs for the violation; and
- (2) That a person must respond to the violation notice by
  - (A) Paying the specified fine and court costs; or
  - (B) Pleading not guilty and appearing at trial.”

The Notice of Violation clearly advised Respondent that she may take the following actions: (1) pay the total fine and costs of \$110, (2) inform the municipal court that she sold the subject vehicle or that the vehicle’s license plates were stolen at the time of the violation, *or* (3) exercise her right to a hearing<sup>5</sup> by appearing in Court by July 31, 2012. L.F. 52-55.

Thus, Respondent could and, in fact, did choose the third option and appeared in Court.<sup>6</sup> The Notice of Violation clearly informed Respondent of her “right to a hearing,” in which case she would “appear in court on [her] scheduled court date to have the matter reviewed by the Municipal Judge.” Accordingly, by offering the alternatives of pleading

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<sup>5</sup> See *City of Independence v. Deffenbaugh Indus., Inc.*, 804 S.W.2d 383, 385 (Mo. App. W.D. 1990) (Court of Appeals described a “trial” in municipal court as a “hearing”).

<sup>6</sup> In that regard, even if the City’s Notice of Violation did not strictly comply with Rule 37.33(b), Respondent cannot show prejudice in that Respondent did, in fact, appear for court and received a fair trial.

guilty, or not pleading guilty and appearing in Court for a hearing, the Notice of Violation complied with the requirements of Rule 37.33(b).

**C. The Notice of Violation does not rely on any rebuttable presumption to establish probable cause or to prove the defendant's guilt.**

Respondent does *not* claim that the Camera Ordinance contains a rebuttable presumption, but instead argues that the Notice of Violation, as applied, creates an implied rebuttable presumption. Respondent's Brief, pp. 27-37. In her Brief, Respondent highlights certain phrases within the Notice of Violation, in isolation, and argues that those phrases create the appearance of an improper rebuttable presumption.

Respondent alleges that a rebuttable presumption is made in "Option A" of the mail in coupon with the phrase: "As the registered owner or identified driver of the vehicle... we have no choice but to hold you responsible for paying this fine... Of course, if you were not the driver at the time of the violation you may appear in court to identify another driver." Respondent's Brief, pp. 32-33; *see also* Notice of Violation, L.F. 53. Respondent also alleges that "Option B" of the mail in coupon implies the existence of a rebuttable presumption by stating that the defendant has "the opportunity to rebut the charge only by either stating the car was sold or stolen, and/or the plates were stolen." Respondent's Brief, p. 33; *see also* Notice of Violation, L.F. 53.

However, these sections cannot be read in isolation, but must be viewed with the entire Notice of Violation. Section 2 of the Notice of Violation provides defendants with *three separate and distinct options*. L.F. 53. A defendant may choose Option A if he or she wishes to pay the fine. *Id.* Option B provides the defendant with the simple option of

completing an affidavit of non-responsibility if the defendant had sold the vehicle or if the defendant's license plates had been stolen prior to the violation. *Id.* The third option, Option C, informs the defendant that she may, instead of paying the fine or submitting an affidavit of non-responsibility, appear in court for a hearing on the matter.

These three distinct and disjunctive options, along with the remaining information contained in the Notice of Violation, do not create an improper rebuttable presumption of guilt. Rather, Respondent was fairly informed of her right to appear for a hearing and to contest the charge thereby requiring the City to meet its burden of proving Respondent committed the offense beyond a reasonable doubt, which it did.

More to the point, it is undisputed that the Camera Ordinance does not create a rebuttable presumption like the ordinance at issue in *Brunner v. City of Arnold*, 427 S.W.3d 201 (Mo. App. E.D. 2013), and, as such, Respondent's reliance on this case on pages 34-35 of her Brief is simply misplaced.

**D. The Camera Ordinance does not violate the Equal Protection Clause.**

Respondent argues that the City "throws [] out" any violation that shows a vehicle registered to a trust, a company, or a corporation. Respondent's Brief, p. 37. Respondent claims that the City's enforcement procedure, as applied, violates the Equal Protection Clause of the Fourteenth Amendment. *Id.*

The Equal Protection Clause of the Fourteenth Amendment provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." *Shaw v. Reno*, 509 U.S. 630, 642 (1993) (citing U.S. Const., Amdt. 14, § 1). As the U.S. Supreme Court has explained, the central purpose of the Equal Protection clause

is to prevent States from enacting legislation requiring “that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute.” *Eisenstadt v. Baird*, 405 U.S. 438, 447 (1972) (holding statute permitting married persons to obtain contraceptives, but prohibiting distribution of contraceptives to single persons violated the Equal Protection Clause).

The Camera Ordinance does not treat any person different in the context of enforcement of the City’s traffic laws. Subpart G of the Camera Ordinance provides that a “person commits an offense under [§ 335.095] when such person fails to comply with the City Traffic Code and the violation is detected through the automated red light enforcement system as herein provided.” L.F. 194. Regardless of whether the vehicle is owned by a trust or a corporation, any person that violates the City Traffic Code as detected through the automated red light enforcement system is liable to prosecution under the Camera Ordinance.

Further, contrary to Respondent’s argument, the deposition testimony from the City Police Officer cited by Respondent, does not establish any violation of the Equal Protection Clause. Although the Police Officer acknowledged that it is not possible to issue a warrant to effect the arrest of a trust or corporation, he did *not* testify that any person whose identity is determined would evade responsibility for violation of the City Traffic Code merely because the vehicle in which that person was driving was registered to a trust or corporation. L.F. 82.

Rather the Camera Ordinance authorizes City Police Officers to “use any lawful means to identify the vehicle’s owner,” *see* L.F. 48, and, when “the vehicle is registered in more than one person’s name, the summons shall be issued to the registrant whom the issuing police officer determines, under all the facts and circumstances, was the person most likely depicted in the Recorded Image.” L.F. 48.

Moreover, as Respondent concedes on page 4 of her Brief, Respondent “does not contest the evidence that she entered the intersection after the light turned red,” nor “the facts or the sufficiency of the evidence” supporting the jury verdict finding her guilty of running the red light. As the U.S. Supreme Court has held, the Equal Protection Clause “does not free those who made a bad assessment of risks or a bad choice from the consequences of their decision.” *Corbitt v. New Jersey*, 439 U.S. 212, 226 (1978).

Respondent has not established any violation of the Equal Protection Clause.

**E. The identification of Respondent as the driver of the vehicle that violated the Traffic Code was not impermissibly suggestive.**

Respondent argues that the process of comparing the red light camera image of the driver of a vehicle to the driver license photo of that driver “fails due process” because it is “an impermissibly suggestive out-of-court identification that creates a very substantial likelihood of irreparable misidentification.” Respondent’s Brief, p. 38.

This argument is simply not relevant. As discussed above, Respondent neither contests the evidence supporting the jury verdict finding her guilty of the offense, nor does she make any claim that she was misidentified.

Indeed, in this case the City Police Officer had more than “suggestive” photographs to base his finding of probable cause. As required by the Camera Ordinance, the Police Officer reviewed photographs and video that clearly depicted: (1) a violation of the Traffic Code recorded as the violation occurred, (2) the date and time of the violation, (3) the letters and numbers of the vehicle’s license plate, as well as the State in which the license was issued, and (4) the traffic control signal while it is emitting a steady red signal. L.F. 48.

Further, the cases relied on by Respondent are inapposite in that the cases involve whether certain police procedures unduly influenced witnesses to select a defendant from a photographic lineup or a live physical lineup.<sup>7</sup>

### CONCLUSION

For all the reasons discussed in the City’s opening Brief and herein, the City’s Camera Ordinance does not conflict with State law, but rather is in full conformity with specific State statutory point-application provisions relating to this type of violation, and should be upheld.

However, even if the no-points clause of the Camera Ordinance is found to conflict with State law, such a conflict does not provide Respondent with any defense to the charged offense. Alternatively, the Trial Court should have applied the severability

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<sup>7</sup> Moreover, in *State v. Body*, the Court of Appeals found that a victim’s identification of the defendant in photographic and physical lineups was *not* unnecessarily suggestive. 366 S.W.3d 625, 629-33 (Mo. App. E.D. 2012).

clause of the Camera Ordinance to remove the no-point provision and enforce the balance of the Ordinance against Respondent.

Accordingly, the City respectfully requests that this Court reverse the Trial Court's Judgment dismissing the citation and reinstate the Jury's verdict against Respondent.

Respectfully submitted,

HAZELWOOD & WEBER LLC

/s/ V. Scott Williams  
V. Scott Williams, #36177  
swilliams@hazelwoodweber.com  
John H. Kilper, #60997  
jkilper@hazelwoodweber.com  
200 N. Third Street  
St. Charles, MO 63301  
Office: 636-947-4700  
Facsimile: 636-947-1743  
*Attorneys for Appellant*

**CERTIFICATE OF COMPLIANCE AND SERVICE**

I hereby certify:

1. That the attached brief complies with the limitations contained in Supreme Court Rule 84.06(b) in that the Brief contains 5,205 words, exclusive of the cover, certificate of service, certificate required by Rule 84.06(c), signature block and appendix as determined by Microsoft Office Word software;

2. This Brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 13-point Times New Roman.

4. That a true and correct copy of Appellant's Substitute Reply Brief was served by the Court's electronic filing system on this 27th day of October, 2014, to:

W. Bevis Schock  
7777 Bonhomme Ave., Suite 1300  
St. Louis, MO 63105  
*Attorney for Respondent*

Hugh A. Eastwood  
7777 Bonhomme Ave., Suite 1603  
Clayton, MO 63105-1941  
*Attorney for Respondent*

V. Scott Williams